

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X	X	
UNITED STATES OF AMERICA,	:	Honorable Mary L. Cooper, U.S.D.J.
	:	
Plaintiff,	:	CRIMINAL NO. 04-373
	:	
v.	:	
	:	
STOP HUNTINGDON ANIMAL	:	
CRUELTY USA, INC.,	:	
KEVIN KJONAAS, a/k/a	:	
"Kevin Jonas," a/k/a "Steve	:	
Shore," a/k/a/ "Jim Fareer,"	:	
LAUREN GAZZOLA,	:	
a/k/a "Angela Jackson," a/k/a	:	
"Danielle Matthews,"	:	
JACOB CONROY,	:	
JOSHUA HARPER,	:	
ANDREW STEPANIAN,	:	
DARIUS FULLMER, and	:	
JOHN McGEE,	:	
	:	
Defendants.	:	
-----X	X	

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION
OF DEFENDANT KEVIN KJONAAS
FOR AN EVIDENTIARY HEARING RELATING TO SUPPRESSION,
AND FOR SUPPRESSION OF EVIDENCE**

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March 11, 2005

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PROCEDURAL HISTORY

On May 20, 2004, the Clerk of this Court filed a five-count indictment against seven individual defendants (Kevin Kjonaas, Lauren Gazzola, Jacob Conroy, Joshua Harper, Andrew Stepanian, Darius Fullmer, and John McGee), and one corporate defendant (Stop Huntingdon Animal Cruelty USA, Inc., also known as SHAC USA, or SHAC).

In Count One of the indictment, all defendants have been charged with conspiracy in violation of the Animal Enterprise Protection Act (the "AEPA"), 18 U.S.C. § 43(a)(1). Count Two charges that SHAC, Kjonaas, Gazzola and Conroy conspired to use a facility in interstate commerce to violate the interstate stalking statute, contrary to 18 U.S.C. § 2261A(2) and in violation of 18 U.S.C. § 371. In Counts Three through Five, the same four defendants have been charged individually with violations of the interstate stalking statute, contrary to 18 U.S.C. § 2261A and 2.

The individual defendants were arraigned on the indictment on June 15, 2004. The arraignment of the corporate defendant SHAC took place on July 20, 2004.

On September 16, 2004, the Superseding Indictment was filed with the Court, by which defendants SHAC, Kjonaas, Gazzola, Conroy, and Harper have been charged in the add-on Count Six with having "knowingly and wilfully combine[d], conspire[d] and agree[d] with one another and with others to utilize a telecommunications device to abuse, threaten and harass persons at the called number and who received the communication without disclosing the identity of the person utilizing the telecommunications device, contrary to" 47 U.S.C. § 223(a)(1)(C), in violation of 18 U.S.C. § 371.

The individual defendants named in the added count thereafter entered their pleas of not guilty, pursuant to Fed. R. Crim. P. 10(b).

Defendant Kjonaas, through his counsel, now moves the Court for an evidentiary hearing, pursuant to Franks v. Delaware, 438 U.S. 154 (1978), based on the misstatements and omissions of fact in the affidavits submitted by the Government in support of its applications for wiretaps, electronic intercepts, and the search warrant of defendants' residence at 101 Home Street in Somerset, NJ (the affidavits and applications of Government agents, at issue in this motion, are annexed in the separate volume of exhibits filed under seal). Mr. Kjonaas moves the Court, following that hearing, to order suppressed all evidence obtained by means of the wiretaps, electronic intercepts, and the home search, on the basis that the remaining content of the applications and affidavits was insufficient to establish probable cause for commission of the offenses upon which the applications were based.

STATEMENT OF FACTS

Defendant Kjonaas, through this motion, seeks an order from the Court suppressing all evidence seized as the result of wire surveillance, electronic surveillance, and the search of his home conducted by the Government. He asks the Court to conduct a Franks hearing to review the sufficiency of the affidavits submitted to the courts issuing the search warrants and authorization orders. Defendant Kjonaas also asks the Court to determine whether the affidavits (considered without the misstatements, and with relevant information -- which had been left out of the affidavit -- properly weighed) established probable cause for the commission of the offenses upon which the applications were based. Following that hearing, defendant Kjonaas will apply to the Court for an order suppressing all evidence seized in the searches and surveillances at issue.

In a series of applications to the United States District Court for the District of Minnesota from November 2002 through February 2003, the Department of Justice sought to investigate, through wire and electronic surveillance, the activities of animal rights activists, with the investigation focused on the day-to-day activities of defendant Kjonaas, on the phone and in his use of computers. The federal court in Minnesota authorized four 30-day periods of wire surveillance. By separate applications and orders, the federal court in Minnesota also authorized four similar periods of electronic surveillance, during which the Government seized much of the evidence upon which it appears to be basing the present prosecution. This suppression motion addresses each of those applications made by the Government within the scope of Title III, 18 U.S.C. §§ 2510 to 2519.

In April 2003, the United States Attorney's Office for the District of New Jersey applied to the United States District Court for the District of New Jersey for a warrant authorizing the search of Mr. Kjonaas' residence in Somerset, NJ. In the search conducted thereafter by Government agents, the Government removed from the home of Mr. Kjonaas and other defendants many boxloads of materials, which included multiple computers, computerized information, personal items, and documents and records -- materials upon which the Government also appears to have based the prosecution now pending.

Chart A, which follows, sets forth in chronological order the nine separate applications submitted to the district courts for the searches and seizures at issue in this motion to suppress. Chart A sets forth:

- the date of the application,
- the name of the agent who signed the affidavit,
- the citation to the section of the affidavit which set forth the statement of probable cause,
- the statutory offenses which the defendant and other specified individuals were alleged in the affidavits to have violated, and
- the names of the persons alleged by the Government to be in violation of those statutes.

Chart A follows:

CHART A -- LISTING OF AFFIDAVITS AND APPLICATIONS

AFFIDAVIT AND APPLICATION, NOV. 15, 2002 (wire)	Affiant: FBI SA Millicent A. Tompa (Da17)	AFFIDAVIT AND APPLICATION, NOV. 27, 2002 (e-mail)	Affiant: FBI SA Millicent A. Tompa (Da128)	AFFIDAVIT AND APPLICATION, DEC. 14, 2002 (wire)	Affiant: FBI SA Millicent A. Tompa (Da199)	AFFIDAVIT AND APPLICATION, DEC. 26, 2002 (e-mail)	Affiant: ATF SA Calvin A. Meyer (Da264)	AFFIDAVIT AND APPLICATION, JAN. 11, 2003 (wire)	Affiant: FBI SA Millicent A. Tompa (Da325)	AFFIDAVIT AND APPLICATION, JAN. 24, 2003 (e-mail)	Affiant: FBI SA Millicent A. Tompa (Da404)	AFFIDAVIT AND APPLICATION, FEB. 10, 2003 (wire)	Affiant: ATF SA Calvin A. Meyer (Da479)	AFFIDAVIT AND APPLICATION, FEB. 21, 2003 (e-mail)	Affiant: FBI SA Millicent A. Tompa (Da578)	AFFIDAVIT AND APPLICATION, APR. 22, 2003 (search warrant -- 101 Home St., Somerset, NJ)	Affiant: FBI SA John A. Bennett (Da644)
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Statement of Probable Cause: Da19-22	Statement of Probable Cause: Da130-33	Statement of Probable Cause: Da200-04	Statement of Probable Cause: Da266-70	Statement of Probable Cause: Da327-31	Statement of Probable Cause: Da406-11	Statement of Probable Cause: Da481-85	Statement of Probable Cause: Da581-87	Statement of Probable Cause: Da646-47									
offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)	offense: 18 U.S.C. § 1951 (extortion -- Hobbs Act); § 2 (aiding & abetting); § 371 (Conspiracy); § 875 (Threatening Interstate Communications); § 1952 (Travel Act)

[illegible]

	Steve [Last Name Unknown]	Steve [Last Name Unknown]	Steve [Last Name Unknown]	Steve [Last Name Unknown]	Steve [Last Name Unknown] (Da488; identified as Steven G. Krolfifer)			
				Christine [Last Name Unknown]				
				Marion [Last Name Unknown]				
				Monica [Last Name Unknown]	Monica [Last Name Unknown]	Monica [Last Name Unknown]	Monica [Last Name Unknown]	Monica [Last Name Unknown]
				"Mez"	"Mez"	"Mez"	"Mez"	"Mez"
				"Sun Tzu"	"Sun Tzu"	"Sun Tzu"	"Sun Tzu"	"Sun Tzu"

A. The Nov. 15, 2002 Application (wire)
(Chart A, column 1)

On November 15, 2002, the Department of Justice applied to the United States District Court for the District of Minnesota for an order, pursuant to 18 U.S.C. § 2518, authorizing a 30-day interception of wire communications to and from telephone numbers 732 545-7560 and 732 545-7570, subscribed to by Kevin Kjonaas. Da18-Da19. In her affidavit in support of the application, FBI Special Agent Millicent A. Tompa stated, on the basis of all information which she had received and determined to be reliable, that defendant Kjonaas and 19 other named persons (including defendants Conroy, Fullmer, Gazzola, and Stepanian):

have committed, are committing, and will continue to commit violations of [18 U.S.C. § 1951] (interference with commerce by threats or violence), hereinafter referred to as the “Hobbs Act”, in the District of Minnesota and elsewhere. Specifically, the subjects of this investigation are operating an international extortion scheme against companies engaged in or doing business with companies engaged in animal-based medical research or “exploitation.” Pursuant to this scheme, companies and their employees are subjected to harassment, arson, property damage, and even physical attack until they discontinue their ties to animal-based research. [Da20]

The affidavit alleged that probable cause existed “to believe that the aforementioned subjects” -- i.e., defendant Kjonaas and the 19 listed violators -- as well as unidentified others, “utilize [the two targeted] telephone number[s] . . . to commit the crime” of Hobbs Act extortion “on an ongoing basis.” Da20.

The present motion to suppress is focused on the statutory bases for the extraordinary relief -- the searches and seizures -- sought by the Government in the series of nine affidavits. The first affidavit, then, was based wholly on alleged violations of the Hobbs Act. As time passed (as detailed below), the Government came to cite additional

statutes against defendant Kjonaas and other alleged "violators." This motion to suppress is founded on the failure of the Government to have set forth any facts linking defendant Kjonaas and the others alleged to have been "violators" of those statutes with the crimes specifically cited by the Government in each affidavit.

In support of the allegations, the affidavit then listed the arrest history of the 20 individuals named therein as "violators." See Da22-Da43. The affidavit omits mention that the arrests listed for the "violators" related to protest and boycott activities, and few (if any) of the arrests resulted in any criminal dispositions or convictions. See Da22-Da43. The few dispositions other than outright dismissals, in turn, involved either conditional discharges, or charges downgraded to low-level ordinance violations or misdemeanors. See Da22-Da43. More damningly, the affidavit alleges that many of the persons named as "violators" are identified with an "NCIC warning," and/or as a "terrorist organization member," and/or as an "animal rights extremist," and/or as an "envrmtl [environmental]" or "dmst [domestic] extremist." See Da22-Da43. The affidavit omits the critical information that the mere association with animal rights or environmental causes or protest activity had led to the designation of these labels. With no explanation provided by the affiant as to why, who, or how the "violators" had come to be branded with these labels and warnings, the Department of Justice was able merely to cite the attachment of the label as a basis warranting the extraordinary investigative tactics sought through the application for the surveillance order.

The affidavit then discusses a raid at the University of Minnesota in April 1999, for which the Animal Liberation Front (ALF) had claimed responsibility. Da43-Da44. The affidavit then (1) lumps the activities of the Earth Liberation Front (ELF) with the

ALF, (2) conflates their actions with a definition of terrorism attributed to James F. Jarboe, a Section Chief within the FBI (Da46), (3) links the activities of "Stop Huntingdon Animal Cruelty, or simply SHAC" -- as a "sub-group in the animal rights movement" -- within the same category, and (4) sweeps defendant Kjonaas within the same category and into all of those organizations in one broad brush. Da43-Da50. The affidavit then attributes actions in the United Kingdom to SHAC and to defendant Kjonaas, as well as actions directed against Huntingdon Life Sciences (HLS) and its employees in the United States. Da50-Da57.

The affidavit then describes efforts attributed to SHAC, animal rights protesters, and defendant Kjonaas at Legacy Trading Inc., an Oklahoma company that acted as a market maker for HLS, to enable HLS stock to be traded. Da57-Da59. The affidavit sets forth calls made to Legacy by protesters to express their opposition to Legacy's doing business with HLS, as well as calls attributed to defendant Kjonaas to achieve the same result. Da57-Da64. The section of the affidavit dealing with Legacy ends with a discussion of an FBI undercover operation to attract SHAC protests against an ostensible business dealing with HLS. The affidavit alleges that the FBI undercover operation succeeded in attracting protest calls from animal rights activists, as well as from the targeted telephone numbers attributed to defendant Kjonaas. Da63-64.

At no point in the affidavit, so far, did the affiant attribute to defendant Kjonaas, or to any of the other named "violators," any conduct in violation of the Hobbs Act, although that act was the sole statute cited as the basis for the wire intercept order requested.

The affidavit sets forth thereafter information relating to protest activities of animal rights activists against Marsh USA, an insurance broker for H.I.S. Da65-Da67.

The affidavit then alleges that trap-and-trace information showed that defendant Kjonaas had received e-mails from addresses attributed to SHAC and to animal rights leaders and activists in the United States and United Kingdom. Da67. The affidavit states, in terms as explosive as they are vague, "The vast majority of the incoming email addresses are from known and active SHAC/animal rights activists in the US and the UK, some of whom are being investigated by the FBI regarding animal rights/domestic terrorism violations." Da67. The allegation is not further clarified in the affidavit.

The affidavit alleges that Mr. Kjonaas' e-mails address has already been subjected to a search warrant in Minnesota, but the e-mails seized were encrypted and could not be read by the Special Agents. Da68. The affidavit alleges, "From one of the emails that was not encrypted, it was clear that KJONAAS was directing the activities of the SHAC USA website." Da68. The affidavit does not allege that any activities attributable to Mr. Kjonaas from that e-mail involved criminal acts, or any violation of the Hobbs Act. The affidavit then describes actions of environmental activists in Montana on behalf of forest preservation. Six days after a wood industry annual meeting took place in Montana, the FBI has determined that one of the targeted telephone numbers attributed to Mr. Kjonaas was used to make and to receive two phone calls to Montana numbers to a location that "appears to be located less than one hundred miles from" a Montana national forest. Da68-Da69.

On that basis, the affidavit alleges, "Your Affiant *believes* that these calls *may have been made* between KJONAAS and one of the activists the US Forest Service was

referring to, further demonstrating KJONAAS' connections to violent activists around the US." Da69 (emphasis added). The allegation is plainly based on broad and wild speculation, without basis in any credible evidence. It also has no connection with the Hobbs Act, or to any conduct attributed to defendant Kjonaas or any of the other 19 named "violators" in connection with the Hobbs Act.

The affidavit then cites articles, interviews, and statements attributed to animal rights activists and defendant Kjonaas in support of the cause of animal rights. Da69-Da71. Again, the allegations have no connection to violation of the Hobbs Act.

The affidavit then mentions a report on an animal rights website of a police raid in England in October 2002, with two persons arrested. Da71. The website had listed a phone number in the United Kingdom, and one of the targeted numbers attributed to defendant Kjonaas called that number five days after the alleged raid. Da71-72. The affidavit continues, "It should also be noted that KJONAAS has received encrypted emails from Greg Avery, who was arrested on October 4, as detailed above." Da72. The affidavit again does not link defendant Kjonaas or any of the other 19 persons listed as "violators" with any act in violation of the Hobbs Act.

The affidavit then describes protest activities directed against Mark Bibi, HLS corporate counsel, in November 2002. Da72. The affidavit describes that one of the targeted phone numbers attributed to defendant Kjonaas had placed four calls to Bibi's residence -- but in the distant past, with calls occurring one month before, and two months before, the events of November 2002. The affidavit also alleges that Mr. Kjonaas' telephone numbers had been linked to the phone numbers of other activists who had protested in person outside Mr. Bibi's home in the past. Da73. Again, the affidavit

has still not listed or described any colorable violation of the Hobbs Act. In its listing of protest activities, the affidavit never notes that the protests are all legal demonstrations, with the protesters lawfully voicing their opinions as protected speech.

The affidavit then describes that the 50th anniversary of HLS was to occur on December 1, 2002, and SHAC was advertising that it would organize protests around that event. Da74. The affidavit attributes to Mr. Kjonaas' telephone numbers calls to New Jersey "area parks, hotels, rental car companies, and bail bond offices." Da74. The affidavit continues: "Based on this pattern of telephone call activity, your Affiant *surmises* that KJONAAS is preparing and planning for many SHAC activists to come to New Jersey for the December 1, 2002, weekend of protests and that he is also expecting many activists to be arrested." Da74-Da75. Again, the affidavit does not set forth any violation of the Hobbs Act, or any allegation of criminal activity within the scope of that act. The acts attributed to Mr. Kjonaas are all lawful, and non-criminal.

There follows in the affidavit a summary of pen register and trap-and-trace information for the target phone numbers. Da75-Da91. The affidavit lists calls among persons identified as animal rights activists and protesters; persons who have been arrested at animal rights demonstrations; a California attorney who "spoke to protesters in a taped public meeting" at a SHAC protest against HLS in Little Rock, Arkansas (Shannon Keith, who is also named as a "violation" of the Hobbs Act in the affidavit, Da20; for speaking with the protesters, Ms. Keith appears to have been designated with an "NCIC warning," and branded a "terrorist organization member, animal rights extremist," Da31); calls with animal rights and environmental organizations in the United States, and to unspecified recipient numbers in the United Kingdom; calls to the stock

exchange and to various corporations; scores of calls involving news media. Da75-86. The affidavit surmises, without any basis in fact cited other than the bare attribution of phone calls, with regard to the stock exchange calls: "Your Affiant *surmises* that KJONAAS is attempting to gain information on clients of HLS through these contacts." Da86 (emphasis added). As for the calls attributed to news media, the affidavit alleges, with no basis in reality or evidence: "Your Affiant *surmises* that KJONAAS is placing calls to media outlets to claim direct action in their area on behalf of SHAC or the A.L.F." Da85-Da86 (emphasis added).

The affidavit attributes 705 outgoing calls to a New Jersey number "whose subscriber is not on record." Da87. Without any basis for how the affiant seized upon the belief listed, the affiant speculates: "It is *believed* by your Affiant that this number is an internet connection number and that KJONAAS uses this telephone to contact his internet service provider to send and receive emails from other animal rights activists and *to direct the content of the SHAC website.*" Da87 (emphasis added). The allegation is a wild guess, unfounded in any evidence. More importantly, even if true, the allegation bears no relation to any violation of the Hobbs Act attributed to defendant KJonaas or any of the other 19 persons listed as "violators" in the affidavit. Da87.

The affidavit ends with a description of some of the alternate investigative methods used by federal agents in connection with the investigation of the persons listed for Hobbs Act violations, Da91-Da103, followed by a statement of the need for electronic surveillance, and the minimization efforts to be conducted, Da103-Da109. Nowhere in the affidavit is there any statement of how defendant KJonaas or any of the other 19 named "violators" is alleged to "have committed, [be] committing, and [will be]

continu[ing] to commit violations of” 18 U.S.C. § 1951, the Hobbs Act, so as to provide a basis for the reviewing court to have determined that probable cause existed for the issuance of the warrant sought and thereafter obtained. See Da1-Da5 (order).

B. The Nov. 27, 2002 Application (e-mail)
(Chart A, column 2)

On November 27, 2002, the Department of Justice applied to the United States District Court of the District of Minnesota for an order, again pursuant to 18 U.S.C. § 2518, authorizing the 30-day interception of electronic communications for certain internet e-mail addresses attributed to defendant Kjonaas. Da117-Da118. In her affidavit in support of the application, FBI Special Agent Tompa stated, on the basis of all information which she had received and determined to be reliable, that defendant Kjonaas and 17 other named persons (including defendants Conroy, Fullmer, Gazzola, Harper, and Stepanian), and an additional person listed as Steve [Last Name Unknown]:

have committed, are committing, and will continue to commit violations of [18 U.S.C. § 1951] (interference with commerce by threats or violence), hereinafter referred to as the “Hobbs Act”; 2 (Aiding and abetting); 371 (Conspiracy); 875 (Threatening interstate communications); and 1952 (Interstate travel in aid of racketeering) hereinafter collectively referred to as the “Specified Federal Offenses.” Specifically, the subjects of this investigation are operating an international extortion scheme against companies engaged in or doing business with companies engaged in animal-based medical research or “exploitation.” Pursuant to this scheme, companies and their employees are subjected to harassment, arson, property damage, and even physical attack until they discontinue their ties to animal-based research.
[Da131]

The statutory bases for the relief sought now included several statutes in addition to the Hobbs Act. The affidavit alleged that probable cause existed “to believe that the aforementioned subjects” -- i.e., defendant Kjonaas and the 17 listed violators -- as well

as unidentified others, utilize the targeted e-mail accounts to commit the crimes just listed “on an ongoing basis.” Da131.

In support of the allegations, the affidavit then incorporates by reference Agent Tompa’s affidavit of November 15, 2002, and then adds the updated arrest history of the individuals named therein as violators. See Da134-Da138. The deficiencies of this affidavit repeat those already listed for the November 15, 2002 affidavit (and those omissions and misleading characterizations of the criminal histories are repeated in each of the subsequent applications for e-mail and wire intercept authorizations).

The affidavit then attributes to defendant Kjonaas communication with other animal rights activists through e-mail, and states the unsupported conclusion that “[t]here is probable cause to believe that the content of KJONAAS’ recent emails would demonstrate his direction and control over SHAC’s acts of violence.” Da140. The affidavit characterizes the use of encryption attributed to defendant Kjonaas as indicative (in a wholly unspecified way) of his criminal involvement in the specified crimes. Da139.

In a vague and speculative narrative, the affidavit attributes to defendant Kjonaas the use of the internet and e-mail to communicate with animal rights activists and alleged organizers. Da141-Da158. The affidavit sets forth the unsupported conclusion that, because defendant Kjonaas appears to have had e-mail and telephone contact with persons named in the affidavit as “violators” of the specified federal laws, it must follow that the contacts have been for a criminal purpose. See Da143-Da158. That conclusion is unsupported by the information outlined so minimally and shaded with such narrative bias in the affidavit.

The affidavit does not set forth any violation of the Hobbs Act, or any allegation of criminal activity within the scope of that act. Further, although the affidavit alleges that probable cause exists that defendant Kjonaas and the 17 others named as “violators” have violated the Travel Act (section 1952), and have violated 18 U.S.C. § 875 (threatening interstate communications), the affidavit provides no basis whatsoever for such a finding of probable cause. The affidavit gives the boilerplate citations and the bare description of what the statutes at issue proscribe, but the affidavit does not reveal any basis upon which to found a probable cause determination that defendant Kjonaas (or any of the named “violators”) had conspired, or aided and abetted, or acted as a principal for the commission of any of the specified offenses.

C. The Dec.14, 2002 Application (wire)
(Chart A, column 3)

On December 14, 2002, the Department of Justice applied to the United States District Court for the District of Minnesota for an order, pursuant to 18 U.S.C. § 2518, authorizing the continuation, for an additional 30 days, of the interception of wire communications to and from telephone numbers 732 545-7560 and 732 545-7570, subscribed to by Kevin Kjonaas. Da199-Da200. In her affidavit in support of the application, FBI Special Agent Tompa stated, on the basis of all information which she had received and determined to be reliable, that defendant Kjonaas and now 25 other named persons (including defendants Conroy, Fullmer, Gazzola, Harper, and Stepanian)¹:

have committed, are committing, and will continue to commit violations of [18 U.S.C. § 1951] (interference with commerce by threats or violence), hereinafter referred to as the “Hobbs Act”; 2 (Aiding and abetting); 371

¹ Although the list of alleged violators in the affidavits reached 36 specifically-named individuals (as well as additional others known only by first names, and two others identified only as “Mez” and “Sun Tzu”), defendant John McGee was not named in any of the affidavits at issue herein.

(Conspiracy); 875 (Threatening interstate communications); and 1952 (Interstate travel in aid of racketeering) hereinafter collectively referred to as the "Specified Federal Offenses." Specifically, the subjects of this investigation are operating an international extortion scheme against companies engaged in or doing business with companies engaged in animal-based medical research or "exploitation." Pursuant to this scheme, companies and their employees are subjected to harassment, arson, property damage, and even physical attack until they discontinue their ties to animal-based research.
[Da202]

The affidavit alleged that probable cause existed "to believe that the aforementioned subjects" -- i.e., defendant Kjonaas and the 25 listed violators -- as well as unidentified others, utilize the targeted telephone numbers to commit the crimes just listed "on an ongoing basis." Da203.

The affidavit incorporates by reference Agent Tompa's prior two affidavits, and starts with the same informationally-deficient statement of the criminal histories of the persons listed therein as "violators." See Da205-Da209.

The affidavit then adds additional information about contacts attributed to defendant Kjonaas with animal rights activists, and imputes to defendant Kjonaas involvement in criminal activity on the basis of mere innuendo flowing from his alleged contacts with the animal and environmental rights community, as well as actions and words attributed to other activists and defendant Kjonaas against the animal experimentation activities of HLS . See Da209-Da227.

As with the predecessor affidavits, the December 14, 2002 affidavit provides no basis upon which the issuing court could determine that probable cause existed that defendant Kjonaas had committed the violations of the specific statutes listed therein, and the court therefore lacked any basis for the issuance of the intercept order which the court signed on that date. See Da184-Da187 (order).

D. The Dec. 26, 2002 Application (e-mail)
(Chart A, column 4)

On December 26, 2002, the Department of Justice applied to the United States District Court of the District of Minnesota for an order, again pursuant to 18 U.S.C. § 2518, authorizing the 30-day continued interception of electronic communications for the same two internet e-mail addresses attributed to defendant Kjonaas. Da255-Da258; Da265-Da268.

In his affidavit in support of the application, Special Agent Calvin A. Meyer of the Bureau of Alcohol, Tobacco and Firearms (ATF) stated, on the basis of all information which he had received and determined to be reliable, as well as his reliance on the prior affidavits of FBI Special Agent Tompa, that defendant Kjonaas and 17 other named persons (including defendants Conroy, Fullmer, Gazzola, Harper, and Stepanian), and an additional person listed as Steve [Last Name Unknown], and two others (identified as "Mez" and "Sun Tzu");

have committed, are committing, and will continue to commit violations of [18 U.S.C. § 1951] (interference with commerce by threats or violence), hereinafter referred to as the "Hobbs Act"; 2 (Aiding and abetting); 371 (Conspiracy); 875 (Threatening interstate communications); and 1952 (Interstate travel in aid of racketeering) hereinafter collectively referred to as the "Specified Federal Offenses." Specifically, the subjects of this investigation are operating an international extortion scheme against companies engaged in or doing business with companies engaged in animal-based medical research or "exploitation." Pursuant to this scheme, companies and their employees are subjected to harassment, arson, property damage, and even physical attack until they discontinue their ties to animal-based research.
[Da267]

The affidavit alleged that probable cause existed "to believe that the aforementioned subjects" -- i.e., defendant Kjonaas and the 17 listed violators -- as well

as unidentified others, utilize the targeted e-mail accounts to commit the crimes just listed "on an ongoing basis." Da267-Da268.

In support of the allegations, the affidavit then incorporates by reference the listings of the criminal histories of the persons listed as "violators," as set forth in Agent Tompa's prior affidavits. See Da270. The deficiencies of this affidavit repeat those already listed for the earlier affidavits.

The affidavit then attributes to defendant Kjonaas further general communications with other animal rights activists by e-mail and telephone, and the use of encryption for electronic communications. See Da270-Da284. The affidavit does not set forth information relevant to criminal acts encompassed within the scope of the federal acts cited as the basis for the application. Further, the affidavit suggests that discussion over e-mail of lawful protest against HLS should provide a basis for the electronic surveillance sought. Da279-Da284. The affidavit ends with the statement that prior methods of surveillance and investigation have not provided the basis for the prosecution of the named "violators" for the statutes cited. See Da284-Da303.

E. The Jan. 11, 2003 Application (wire)
(Chart A, column 5)

On January 11, 2003, the Department of Justice applied to the United States District Court for the District of Minnesota for an order, pursuant to 18 U.S.C. § 2518, authorizing the continuation, for an additional 30 days, of the interception of wire communications to and from telephone numbers 732 545-7560 and 732 545-7570, subscribed to by Kevin Kjonaas. Da314-Da316; Da325-Da326. In her affidavit in support of the application, FBI Special Agent Tompa stated, on the basis of all information which she had received and determined to be reliable, that defendant Kjonaas